

Remarks

The Office Action dated December 9, 2008 has been received and its contents carefully noted. The Examiner has entered a restriction requirement and has indicated that he believes there are two separate species in this action, Species 1 (represented by Fig. 9 and claims 1 – 19); and Species 2 (represented by Fig. 13 and claims 1 – 25).

The Office Action is unclear and ambiguous, in so much that it states that claims 1 – 19 are simultaneously directed to Species 1 and generic (see pg. 2 and 3). As best understood, Applicant submits this Response under the belief that the Examiner is alleging that the embodiment of Applicant's invention depicted in Fig. 9 is representative of Species 1, while the embodiment of Applicant's invention that is depicted in Fig. 13 is representative of Species 2. To comply with its obligations under the Office Action, Applicant hereby provisionally elects Species 1, believed to be represented by Fig. 9, with traverse.

Applicant disputes the necessity of the Examiner's restriction requirement, however, and therefore traverses the restriction requirement. A requirement for restriction between species is permissible only if there is a patentable difference between the species as claimed and there would be a serious burden on the examiner if restriction is not required. MPEP 808.01(a). Applicant respectfully submits that the subject matter of provisionally elected Species 1 is sufficiently related to the subject matter of the unelected species that there would be no undue burden involved in examining all of the claims.

Moreover, according to MPEP § 808.02, the examiner must show by appropriate explanation one of the following: (a) there is a separate classification; (b) there is a separate status in the art; or (c) there is a different field of search necessary. The Office Action does not set forth sufficient detail as required under MPEP 808.02 to establish that there is a serious burden on the examiner if restriction is not required, and therefore Applicant is not able to

address the conclusions asserted by the Office Action as to this burden. Specifically, the Examiner has simply listed some of the differing features of two embodiments of Applicant's invention. See paragraph 3 of the Restriction Requirement. Applicant submits that this simple listing does not meet the Examiner's burden under §808.02. As such, Applicant respectfully requests that this restriction requirement be withdrawn.

In order to meet its burden under the Restriction Requirement, Applicant has provisionally elected what it believes to be Species 1. As stated above, Applicant believes that Species 1 relates to the embodiment depicted in Fig. 9. As such, Applicant has withdrawn claims 11 – 14 and 23 – 25, and believes the remaining claims are either generic or related specifically to the embodiment depicted in Fig. 9. Applicant has amended claim 10 to describe the elected Species and to correct a minor typographical error.

Applicant has also amended claims 1 and 19 to correct minor typographical errors. As indicated on page 3 of the Office Action, claims 1 – 19 are generic and apply to both Species. Applicant respectfully submits that independent claim 20 is also generic and likewise applies to both Species.

Applicant hereby reserves the right to re-submit any claims that may be canceled in the future in a continuing application, and to present any and all arguments for issuance at that time.

It is believed that the applicant has addressed all outstanding matters and that all pending claims are allowable. Any fees required by this Response may be charged to our firm's Deposit Account No. 502,261.

Please contact the undersigned attorney if there are any remaining questions.

Respectfully submitted,

Dated: January 8, 2009

By: /Maurice E. Finnegan III./

Michael A. Carrillo, Reg. No. 44,595
Maurice E. Finnegan, III, Reg. No. 54,099
NEAL, GERBER & EISENBERG
Two North LaSalle Street, Suite 2200
Chicago, Illinois 60602
(312) 269-8000

NGEDOCs: 1593062.1